

(2011) 10 P&H CK 0138

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 886 of 2011 (O and M)

State of Haryana and Others

APPELLANT

Vs

Surindra Kumar Mishra and Others

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2013) 1 SCT 563

Hon'ble Judges : M.M. Kumar, Acting C.J.;Rajiv Narain Raina, J

Bench : Division Bench

Advocate : S.S. Pattar, D.A.G., Haryana, for the Appellant; K.L. Arora, Advocate for the Respondent Nos. 1 to 30 and Mr. S.S. Malik, Advocate for the Respondent Nos. 31 to 52, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—This order shall dispose of five appeals filed under Clause X of the Letters Patent as all of them are directed against the common judgment/order dated 09/09.2010 passed by the learned Single Judge. The learned Single Judge has allowed the writ petitions directing the respondent-State of Haryana to count the ad hoc service rendered by the writ petitioners-respondents towards their seniority in the cadre of Lecturers in Government Colleges in Haryana. The learned Single Judge had drawn the facts from the present writ petition and therefore, there is no necessity to draw facts from the connected cases. It is the common case that the names of the petitioners were registered with different Employment Exchanges in Haryana. They responded to an advertisement for filling up the vacancies for the post of Lecturers (College Cadre) on ad hoc basis. The mode of recruitment was both by way of inviting direct applications as well as through sponsorship by Employment Exchange. In order to make the selections, a Selection Committee comprising of DPI (Colleges), an IAS Officer, a subject expert and the Deputy Director (Colleges), Haryana was constituted. The selection was purely on the basis of interview. On the basis of selection,

appointments followed in the year 1976 onwards. It is also not in dispute that the petitioners continued to work as Lecturers from 1976 to 1988 and thereafter their services were regularized through Haryana Public Service Commission. The posts were temporary but likely to continue. On such regularization, appointees were put on probation for two years in the first instance. There was a condition in the appointment order that seniority would be fixed in accordance with the departmental rules and that such appointment will not affect the inter-se seniority of the candidates recommended by the Commission. In the meantime, the petitioners in accordance with the length of service etc., had been placed in senior scale, selection grade and while granting them these two benefits their ad hoc service was counted. They were also granted benefit of leave and other service benefits as they were regularly appointed Lecturers. They were also granted benefit of the guidelines of the UGC for grant of benefit of revised pay-scale as per Government letter dated 08.12.2000 (Annexure P-4). The issue of counting of past service, has inter alia, been decided in the said Government instructions. The petitioners relied on this letter before the learned Single Judge to fortify their case for counting of their ad hoc service towards their seniority. According to the petitioners, on the date of appointment on ad hoc basis, their services were governed by the Punjab Subordinate Educational Service Rules, 1937 (for short "the 1937 Rules").

2. The Government however, refused to grant them the benefit of ad hoc service which led to the filing of the writ petition referable to this appeal. It took the stand that ad hoc service rendered by the petitioners could not be counted towards seniority in terms of Rule 11 of the Haryana Education (College Cadre) Group B Service Rules, 1986 (for short "the 1986 Rules") which provides for determination of seniority on the basis of continuous length of service rendered on regular basis.

3. The interpretation of the respondent-State is that only a regular appointee is entitled to seniority in the cadre of service and consequently, the seniority of the petitioners can only be reckoned from the date of their regularization and not from the date of their appointment on ad hoc basis. From the perusal of record, it comes out that the first seniority list of college cadre Lecturers showed the position as it existed on 04.02.1987; second on 01.01.1993, third on 01.09.1997 and the fourth one on 01.01.2004. The petitioners have been shown even below the candidates of the Colleges taken over by the State.

4. The short controversy before the learned Single Judge can be crystalized thus;

5. The petitioners having been appointed on ad hoc basis prior to the promulgation of the 1986 Rules, their services could only be governed by the 1937 Rules and since the Director of Public Instructions, Haryana was the appointing authority under Old Rule 4 for College Lecturers, the procedure for making appointment under Rule 6 either by way of direct recruitment or by transfer from Government Department other than the Education Department was legal and valid and, therefore, their initial appointments would be treated as

regular appointments and the use of the word ad hoc was a misnomer. The State's case is that though the petitioners were appointed under Rule 1937, their services were regularized through the Commission after the commencement of 1986 Rules and therefore, their service conditions including seniority has to be governed and regulated by 1986 Rules. Rule 11 of 1986 Rules lays down that inter se seniority of the members of the service shall be determined by the length of continuous service on any post in the service. Before the learned Single Judge the petitioners relied upon the judgments passed in the case of The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, ; Sports Authority of India and another v. Adarsh Mehta and another, 2004 (4) SCT (DB) 122; Rudra Kumar Sain and Others Vs. Union of India and Others, to contend that since the initial appointments have been made according to rule though called ad hoc, deficiency, if any, stood cured at the time of regularization by the Commission and that such regularization would relate back to the initial appointment to secure them the benefit of seniority from the initial date of appointment. The respondent-State before the learned Single Judge relied upon the judgment passed in the cases Excise Commissioner, Karnataka and another Vs. V. Sreekanta, and State of Punjab and Anr. v. Ashwani Kumar and Ors., 2008 (4) S.C.T. 269; 2008 (5) Recent Apex Judgments (RAJ.) 569; 2009(1) RSJ 452. It was thus pleaded that Rule 20 of 1937 Rules relating to appointment of Lecturers stands repealed under the 1986 Rules and, therefore, the petitioners cannot claim the benefit of their appointment under old Rules towards seniority.

6. We have heard learned counsel for the parties at considerable length and have perused the record.

7. Mr. S.S. Pattar, Sr. DAG, Haryana appearing for the appellant-State has assailed the judgment of the learned Single Judge on the grounds that the petitioner-respondents were appointed only on ad hoc basis therefore their status could not be altered and, therefore, the question of completion of probation by the petitioner-respondents to confer a right of seniority did not arise; that Rule 11 of 1986 Rules is determinative of inter se seniority of members of service and that regular service is required and not just length of continuous service; that there was delay in challenging seniority; the reliance on UGC guidelines was misplaced as those guidelines were only advisory in nature and that their application would result in injustice to non-parties or affected parties.

8. We are in agreement with the findings of the learned Single Judge on the issues debated and decided. If the foundational fact of status of first entry into service is legal and valid which commensurate with Article 14 & 16(1) of the Constitution, consequences of seniority would automatically follow from the initial date. It is contended by learned counsel for the respondents that in the face of appointment of petitioners-respondents under the 1937 Rules in accordance with the procedure set out therein then such appointments having been made against

substantive and clear vacancies existing in the cadre at the time of initial appointment seniority of such appointments can be made to run from such appointment as held by the learned Single Judge. Mr. Pattar has been unable to distinguish the judgments relied upon, each of which help promote the case of the petitioner-respondents.

9. Mr. S.S. Pattar, learned counsel for the appellant has further relied upon a Division Bench decision of this Court in the case of Malook Singh and others v. State of Punjab and others, 1992 (2) S.C.T 133 : 1991 (7) SLR 367 [Para 1], decided on 15.03.2011, to contend that ad hoc appointees are not entitled to seniority on the basis of length of their service. This case is distinguishable on facts as there was no issue of interplay of old and new Rules as in the present case. He has also relied upon a short order passed by a Division Bench of this Court in the case of Madan Lal and others v. State of Haryana and others in (CWP No. 17738 of 2005) decided on 08.02.2007. There is no ratio discernible from the short order. It only follows the judgment of State of Haryana v. Haryana Veterinary and AHTS Association, case. We have therefore, examined the decision of the Hon'ble Supreme Court rendered in State of Haryana v. Haryana Veterinary and AHTS Association, in 2000 (4) S.C.T 664: Civil Appeal No. 13423 of 1996 and do not find that decision is of any help to the learned counsel nor was it a case of transition from old to new rules.

10. Learned counsel has not been able to satisfy us while placing reliance in Dr. Gagan Inder Kaur & Ors. v. Union Territory of Chandigarh & Ors., (CWP 368 of 1987) decided on 17.10.1995 that even though an appointment may be described as ad hoc but in reality it is an appointment on regular basis made in accordance with the procedure that was required to be followed for making a regular appointment under the Rules 1937, which were considered by the Bench and dubbing them as ad hoc would be erroneous. The application of the law laid down in Direct Recruit Case's case (supra) would save the petitioner-respondents in this appeal inasmuch as that once an appointment is made to the post according to the extant Rule, then seniority has to be counted from the date of appointment and not according to the date of confirmation. Assuming that in case even some further technicality remained to be rectified then also the seniority from initial date of appointment would run as explained in State of W.B. and Others Vs. Aghore Nath Dey and Others, :

The question, therefore, is of the category which would be covered by conclusion (B) excluding therefrom the cases covered by the corollary in conclusion (A). In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, "if the initial appointment is not made by following the procedure laid down by the "rules" and the latter expression "till the regularization of his service in accordance with the rules". We read conclusion (B), and it must be so read to reconcile with conclusion (A), to

cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time our purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularization, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterrupted till the regularization of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion(A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A).

11. We, therefore, find no merit in these appeals. These appeals do not warrant admission. Accordingly we dismiss the same. The judgment and order of the learned Single Judge is upheld.

12. No costs. A Copy of this order be placed on record of each file concerned.